

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2002-665

January 10, 2003

LAURIE A. DOWNS, ET AL VS. ) TEMPORARY  
CENTRAL MAINE POWER COMPANY, ) PROTECTIVE ORDER NO. 2  
Request for Commission Investigation Into ) Confidential Business  
the New Central Maine Power Company ) Information  
Transmission Line Proposal for Eliot, Kittery )  
and York )

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Central Maine Power Company (“CMP”) has been asked to provide information between CMP and landowners where the information concerns the location and terms for the sale of easements or the granting of other related rights (i.e., EX-01-09: “Please provide a status report on agreements with landowners that CMP will need for any land not covered by eminent domain.”). Disclosure of the requested information would likely adversely affect future negotiations with landowners for the sale of easements or the granting of other related rights.

CMP has maintained in the past that information of this kind constitutes trade secrets, that it has value to competitors and that its release would be damaging to the interests of CMP and its customers. Section 1311-A (1)(A) of Title 35-A of the Maine Revised Statutes grants the Commission the authority to issue protective orders to protect the interests of parties in confidential or proprietary information, trade secrets, or similar matters as provided by the Maine Rules of Civil Procedure, Rule 26(c). The Hearing Examiner and the Commission have been sensitive to those concerns. See, e.g., Hearing Examiners' Protective Order No. 2 – Confidential Business Information in Re: Central Maine Power Company and CMP Natural Gas, LLC, Authorization of the Sale of Property and for Approval of Affiliated Interest Transaction, Docket No. 99-739 and Protective Order No. 1 - Confidential Business Information in Re: Central Maine Power Company, Application for Authorization to Sell Easements and Consents for Natural Gas Transmission Lines, Docket No. 98-079. In those cases, the information was released only to certain parties.

CMP has agreed to produce information and documents related to the requested information on the condition that a protective scheme be implemented similar to that used in the proceedings in Dockets 99-739 and 98-079 to protect confidential information. Any party at any time can move for a finding that material subject to protection should no longer be so treated or that the other party should be provided access to the protected information pursuant to protective provisions. Unless such a motion is granted, however, use of the allegedly confidential materials continues to be restricted by the terms of this Temporary Protective Order No. 2.

In order to expedite the provision of this information to the Commission and subject to reconsideration in light of arguments by any intervenors, the Examiners conclude that the limited and revocable protection requested by CMP is warranted under 35-A M.R.S.A. § 1311-A and Rule 26(c) of the Maine Rules of Civil Procedure. If the Commission decides to open a formal investigation, and after petitions to intervene are ruled upon, parties will have the opportunity to seek access to the confidential information. Until that time, access is restricted as described below.

Accordingly, it is

**ORDERED**

1. Until further order of the Commission, non-public materials and information submitted by CMP in this proceeding relating to:
  - (1) financial information or analyses concerning costs, revenues and earnings prepared by or for CMP;
  - (2) information concerning the pricing provisions of agreements under which CMP has bought or sold real property interests, other than fee interests; and
  - (3) information concerning the compensation which CMP received for real property interests that were taken pursuant to eminent domain powers.shall be considered “Designated Confidential Information” for purposes of this Protective Order and access to, and use of, such materials or information shall be limited as provided herein.
2. Designated Confidential Information shall be clearly marked as confidential by use of physical inscriptions, stamps or otherwise. In the case of documents, the word “confidential” shall be stamped in bold lettering in the upper right hand corner of each page. In the case of diskettes, the diskette shall be clearly marked as “confidential” on the outside and each file on the diskette will be similarly identified.
3. This Protective Order shall govern all Designated Confidential Information submitted in this proceeding by or on behalf of CMP and, notwithstanding the termination of this proceeding, shall remain in effect until specifically modified or terminated by the Commission, for good cause shown or on the Commission’s own motion.
4. Access to Designated Confidential Information shall be limited to: (i) members and staff of the Commission; (ii) the Public Advocate; (iii) attorneys, paralegals, employees, independent consultants or other experts retained by the Commission or the Public Advocate for the purpose of advising, preparing for, or testifying in this proceeding; (iv) attorneys, employees or any other representatives of CMP,

- and (v) a stenographer or reporter recording any hearing in connection with this proceeding.
5. Designated Confidential Information shall not be used except as necessary for the conduct of this proceeding. Designated Confidential Information shall be treated as confidential by any person who receives such information. Designated Confidential Information may not be disclosed in any manner to any person other than a person who is involved in this proceeding and who needs the information in order to carry out that person's responsibilities in this proceeding.
  6. Persons authorized to review Designated Confidential Information may take such notes as may be necessary solely for purposes of this proceeding. Any such notes shall be treated as Designated Confidential Information.
  7. Designated Confidential Information shall be maintained in a secure place. Access to that place shall be limited to persons who are authorized to review Designated Confidential Information.
  8. Any person who submits pleadings, briefs, prepared testimony, exhibits, or other legal documents that contain Designated Confidential Information shall do so in accordance with the procedures for marking and maintaining the confidentiality of such information as provided in this Protective Order.
  9. Any person who intends to use Designated Confidential Information in oral presentations or to examine witnesses during a public proceeding shall notify the Commission of such intention in advance. The Commission shall take appropriate actions to exclude persons who are not authorized to access Designated Confidential Information from that portion of the proceeding that will involve the disclosure or discussion of Designated Confidential Information.
  10. In the event of any appeal or other judicial review of a decision of the Commission in this proceeding, any portions of the record that contain Designated Confidential Information shall be forwarded to the reviewing court in accordance with applicable laws and procedures for preventing the disclosure of confidential information.
  11. If the Commission determines in a subsequent order that any person, other than those persons designated in Paragraph 4 of this Protective Order, may have access to Designated Confidential Information, such person shall be required to execute and provide to CMP a non-disclosure certificate in the form attached hereto as Appendix A before obtaining access to such information.
  13. Nothing in this Protective Order shall be construed as precluding CMP from objecting to the use of Designated Confidential Information on any legal grounds.

14. Nothing in this Protective Order shall preclude any party from requesting the Commission to find that this Protective Order should not apply to all or any part of any Designated Confidential Information.
15. This Protective Order may be modified on motion of any party or on the Commission's own motion upon reasonable prior notice and an opportunity for hearing.
16. Within forty-five (45) days after the Commission issues a final and non-appealable decision in this proceeding, each party to whom Designated Confidential Information has been provided shall destroy all documents, notes and other materials containing or reflecting, directly or indirectly, Designated Confidential Information; provided, however, that subject to the continuing confidentiality requirements of this Protective Order, the Commission and Public Advocate may retain any Designated Confidential Information that is required by those parties for purposes of carrying out their official duties and obligations. Audio, video, computer files and other magnetically or electronically recorded materials shall be erased before disposal. Documents shall be shredded.

DATED at Augusta, Maine this 10<sup>th</sup> day of January, 2003.

BY ORDER OF THE HEARING EXAMINER

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